

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INTERNATIONAL UNION OF	)	
OPERATING ENGINEERS, LOCAL 2	)	
	)	
Petitioner,	)	Public Case No. R 2003-012
	)	
v.	)	
	)	
CITY OF ST. LOUIS	)	
	)	
Respondent.	)	

and

UNITED ASSOCIATION OF JOURNEYMEN	)	
AND APPRENTICES OF THE PLUMBING &	)	
PIPEFITTING INDUSTRY OF THE U.S.A. AND	)	
CANADA, LOCAL 562	)	
	)	
Petitioner,	)	Public Case No. R 2003-014
	)	
v.	)	
	)	
CITY OF ST. LOUIS	)	<b>(The cases were consolidated for</b>
	)	<b>hearing and decision)</b>
Respondent.	)	

**JURISDICTIONAL STATEMENT**

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo. 2000. The matters before the State Board of Mediation arise from the filing of representation petitions by the International Union of Operating Engineers, Local 2 (hereinafter referred to as the Operating Engineers) and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S.A. and Canada, Local 562 (hereinafter referred to as the Pipefitters). The Respondent in both cases is the City of St. Louis (herein after referred to as the City). In Public Case No. R 2003-012, the Operating Engineers seek to represent all Mechanical Maintenance Workers, Lead Mechanic Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, excluding all supervisors, managers, clerical and

secretarial employees, and Mechanical Maintenance Workers in Building Maintenance at Lambert Airport. In Public Case No. R 2003-014, the Pipefitters seek to represent all full-time and part-time Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Mechanical Maintenance Foreman, and Mechanical Maintenance Helpers, excluding all others. The City maintains that both proposed bargaining units are appropriate. Since the two proposed bargaining units overlapped, the two representation petitions were consolidated for hearing and decision. A hearing on these matters was held on January 22, 2003 in St. Louis, Missouri, at which representatives of the Operating Engineers, Pipefitters, and City were present. The case was heard by State Board of Mediation Chairman John A. Birch, Employee Member LeRoy Kraemer, and Employer Member Lois Vander Waerdt. At the hearing, the parties were given full opportunity to present evidence and make their arguments. Afterwards, the parties filed briefs. After a careful review of the evidence and the arguments of the parties, the Board sets forth the following Findings of Fact, Conclusions of Law, and Order.

#### **FINDINGS OF FACT**

On October 18, 2002, the Operating Engineers filed a petition with the Board seeking to represent all Mechanical Maintenance Workers, Lead Mechanic Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, excluding all supervisors, managers, clerical and secretarial employees, and Mechanical Maintenance Workers in Building Maintenance at Lambert Airport. The Operating Engineers' proposed bargaining unit includes approximately twenty-eight employees. The petition was dated October 15, 2002.

On October 22, 2002, the Pipefitters filed a petition with the Board seeking to represent all full-time and part-time Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Mechanical Maintenance Foreman, and Mechanical Maintenance Helpers, excluding

all others. The Pipefitters' proposed bargaining unit includes approximately seventy employees. The petition was dated October 18, 2002.

On January 7, 2003, a preliminary conference was held with all interested parties concerning the two representation petitions. At the preliminary conference, the parties failed to resolve the dispute. Therefore, the Chairman determined that a hearing was necessary to resolve the issue.

The City is a charter City within the State of Missouri. The Mayor and Board of Aldermen govern the City. The City government is comprised of a number of different departments and agencies.

Pursuant to authority granted in its charter, the City enacted ordinance 64954, as amended, which regulates the employer and employee relationship between the City and all employees under the City's classified service. Ordinance 64954 governs the following areas: employee compensation, terms and conditions of employment, employee benefits, leaves of absence, and deferred compensation.

The City has also established a Civil Service System for its employees. The system is administered by the City's Civil Service Commission. The Commission has established Civil Service Rules that apply to all employees within the City's classified service. All of the employees in question fall within the City's classified service. As such, they are subject to City ordinance 64954 and the City's Civil Service Rules.

Compensation for all of the Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, and the Mechanical Maintenance Foreman is calculated in a similar manner. The City has one compensation plan for all employees within the City's classified service. The compensation plan is comprised of different pay schedules. The pay schedule for "trade" job classifications is designated by a "T." All of the Mechanical Maintenance Workers, Lead

Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, and the Mechanical Maintenance Foreman fall within the T pay schedule. Additionally, they all have the same overtime code. Therefore, overtime for all of the employees in question is calculated in the same manner.

As indicated previously, all of the Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, and the Mechanical Maintenance Foreman are subject to City ordinance 64954 and the City's Civil Service Rules. Therefore, they are subject to the same terms and conditions of employment. They also receive the same employee benefits.

All of the job classifications in question perform some type of maintenance duties. Additionally, the work performed by the employees within each job classification is similar. However, the specific job duties performed by an employee within a job classification could vary depending upon the position held by that employee.

Job qualifications are also similar within each job classification in question. The development of the specific job qualifications is a joint effort between the City's Examination Division and the Appointing Authorities. A single examination is used for each job classification. Generally, the examination consists of an evaluation of the applicant's training and experience and an oral interview of the applicant. The applicants are placed on a registry. There is one registry per job classification. Vacancies within all City departments and agencies are filled from the applicable registries. Each registry is used for a period of two years.

The City's Civil Service Rules permit the interchange of employees within their respective job classifications. However, the transfer of employees between departments and agencies depends upon the appropriateness of the specific positions. Furthermore, such transfers require the approval of the City's Director of Personnel and the Appointing Authority.

The vast majority of the employees included in the proposed bargaining units work at the airport. However, the remainder of the employees work in different locations throughout the City.

There appears to be a great deal of continuity and integration within the City's processes. The City has an extensive Civil Service System. The City's job classification system, hiring processes, and other terms and conditions of employment apply to all City departments and agencies.

The City's labor-relations policy is the same for all employees within the City's classified service. All of the employees are subject to City ordinance 64954 and the City's Civil Service Rules. Furthermore, collective bargaining within the City appears to be established by City ordinance.

The employees in question work for different immediate supervisors. The petitioned for employees work within four or five different City departments or agencies. Each City department or agency has a separate appointing authority.

All of the petitioned for employees appear to share the same relationship to the City's administrative organization. All of the employees fall within the City's maintenance trade job classifications.

There is a long history of collective bargaining within the City. As stated previously, collective bargaining within the City appears to have been established by City ordinance. For twenty years the City's Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, and Lead Water Plant Maintenance Mechanics were included in one bargaining unit. The Operating Engineers represented that bargaining unit. The City and the Operating Engineers entered into a Memorandum of Understanding concerning that bargaining unit. Approximately three years ago, as the result of an election, the

Operating Engineers were decertified as the bargaining unit's exclusive bargaining representative.

### **CONCLUSIONS OF LAW**

This Board is charged with deciding issues concerning appropriate bargaining units by virtue of Section 105.525 RSMo. 2000 which provides: "Issues with respect to appropriateness of bargaining units and majority representative status shall be resolved by the State Board of Mediation." It is mandatory upon the Board to decide the issue appropriate of bargaining unit. *See, Golden Valley Memorial Hospital District v. Missouri State Board of Mediation*, 559 S.W.2d 581, 583 (Mo. App. 1977). However, the Legislature provided the Board with only minimum guidance with regard to this task. *Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA*, 807 S.W.2d 63, 69 (Mo. banc 1991).

The State Board of Mediation was established by the General Assembly as a specialized agency possessed of broad discretion. It consists of employer and employee representatives in equal numbers, with a neutral chairperson. It is to be expected that the employer and employee representatives will draw upon their specialized knowledge in contributing to informed decisions. *Id.* at 68 (Citations omitted).

Even in cases where the facts are virtually undisputed, the Board has the substantial task of evaluating those facts within the context of the case in order to implement the general mandates of the Missouri Public Sector Labor Law. *Id.*

Section 295.070.1, RSMo. 2000 provides that "[t]he board shall by regulation prescribe the methods of procedure before it." Pursuant to the statute, the Board promulgated procedural regulations. 8 CSR 40-2.080 provides that upon the filing of a petition, the Chairman shall investigate the petition and determine if a valid question of representation exists in a prima facie appropriate unit. 8 CSR 40-2.100 provides that a representative of the Board shall hold an informal conference with all interested parties to encourage the parties to agree upon the appropriate bargaining unit. If the parties are unable to agree upon the appropriate bargaining unit, the matter is set for hearing. 8 CSR 40-2.100 and 8 CSR 40-2.140.

As a preliminary point, the Operating Engineers maintained that the Board should not have set these matters for hearing, but should have proceeded directly to an election in Public Case No. R 2003-012. However, the Board properly followed its procedures in setting these cases for hearing to resolve the issue of appropriate bargaining unit. Compare, *Local Union No. 95, International Brotherhood of Electrical Workers v. City of Monett*, Public Case No. 75-106 and *Service and Hospital Employees Union, Local 50 v. City of Monett*, Public Case No. 75-107 (SBM 1976)(Consolidated for hearing and decision).

In this consolidated case, there are two competing representation petitions pending before the Board. The petitions were filed four days apart. The two petitioned for bargaining units clearly overlap. The City is the Respondent in both cases. The City agrees that both of the proposed bargaining units are appropriate. In these cases, a question of representation exists. Furthermore, since the City agrees that both bargaining units are appropriate, the units are *prima facie* appropriate units. A preliminary conference was held in an attempt to resolve the issue of the overlapping bargaining units, but the parties were unable to resolve the issue. Given that the bargaining units overlapped, the Board consolidated the two petitions for the purpose of holding a hearing to resolve the issue of appropriate bargaining unit. Nothing in the Board's regulations or procedures prevent the Board from consolidating petitions for hearing and decision. The consolidation of the cases led to judicial economy and was within the broad discretion of the Board. The Board properly followed its procedural regulations which were promulgated pursuant to statute.

The Operating Engineers also argue that, since the City did not contest the appropriateness of the bargaining unit in Public Case No. R 2003-012, the National Labor Relations Board (NLRB) would not have questioned the appropriateness of the proposed bargaining unit, but would have proceeded to an election. However, the Board is not bound by NLRB decisions or procedures. See, *Parkway School District v. Parkway Association of*

*Education, Support Personnel, PA-ESP, Local 902/MNEA*, 807 S.W.2d at 69. The Board is free to set its own procedures. Furthermore, in instances where two or more petitions involving the same employer are pending before the NLRB, the NLRB may consolidate the petitions and hold one hearing. 1 Patrick Hardin & John E. Higgins, Jr., *The Developing Labor Law* 500 (4<sup>th</sup> ed. 2001). The Board properly employed that procedure in these cases.

We now turn to the issue of appropriate bargaining unit. An appropriate bargaining unit is defined in Section 105.500(1) RSMo. 2000 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a “clear and identifiable community of interest” nor does it set out any criteria as to the means to be used by the Board in resolving such issues. However, the Board has consistently looked to a number of factors in determining whether employees have a community of interest. Those factors, as set forth in *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990) are:

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills, and training of employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.

11. Extent of union organization.

Additionally, in making a determination concerning appropriate bargaining unit, there is no requirement that the unit be the most appropriate or the best unit. *City of Poplar Bluff v. International Union of Operation Engineers, Local 2, AFL-CIO*, Public Case No. UC 90-030 (SBM 1990). However, because of the Board's concern with over-fragmentation of a bargaining unit, the Board has consistently held that employees who possess skills and duties not shared by other employees will require separate representation only when it is necessary to protect their right to effective bargaining. *Sheet Metal Workers International Association Local No. 2 v. Central Missouri State University*, Public Case No. 83-001 (SBM 1983). Furthermore, "[t]he board has recognized that there is strength in size and that a unit may be too small to be effective, so that employees should be excluded from bargaining units only for substantial reasons." *Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA*, 807 S.W.2d 63, 68 (Mo. banc 1991). The petitioning party has the burden of proving the appropriateness of the bargaining unit. *Central County Emergency 911 v. International Association of Firefighters Local 2665*, 967 S.W.2d 696, 699 (Mo. App. W.D. 1998).

An analysis of the factors in this case demonstrates that the Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Mechanical Maintenance Foreman, Mechanical Maintenance Helpers, Water Plant Maintenance Mechanics, and Lead Water Plant Maintenance Mechanics share a clear and identifiable community of interest and therefore, constitute an appropriate bargaining unit.

Compensation for all of the Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, and the Mechanical Maintenance Foreman is calculated in a similar manner. The City has one compensation plan for all employees within the City's classified service. The

employees in question fall within the T pay schedule of the City's compensation plan. Additionally, they all have the same overtime code and their overtime pay is calculated in the same manner.

Additionally, the Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, and the Mechanical Maintenance Foreman are subject to the same terms and conditions of employment. They also receive the same employee benefits.

The Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, Lead Water Plant Maintenance Mechanics, and the Mechanical Maintenance Foreman all perform maintenance duties. Additionally, the work performed by the employees within each job classification is similar.

Furthermore, the job qualifications within each job classification are similar. A single examination is used for each job classification within the City's classified service. The applicants within in each job classification are placed on a registry and vacancies within all City departments and agencies are filled from the applicable registry.

The City's Civil Service Rules permit the interchange of employees within their respective job classifications. However, the transfer of employees between departments requires the approval of the City's Director of Personnel and Departments' Appointing Authorities.

The vast majority of the employees in question work at the airport. However, the remaining employees work at various locations throughout the City.

There is a great deal of continuity and integration within the City's processes. This is particularly true with regard to the City's personnel policies and procedures. The City has an extensive Civil Service System. The City's job classification system, hiring processes, and other terms and conditions of employment apply to all City departments and agencies.

The City's labor-relations policy is the same for all employees within the City's classified service. Furthermore, collective bargaining within the City has been established by ordinance.

All of the employees in question do not have the same immediate supervisor. However, this fact does not preclude a finding that the employees share a community of interest. *International Union of Operating Engineers, Local 2 v. City of Osage Beach*, Public Case No. R 98-008 at 13 (SBM 1998)(citing, *California Physicians' Service d/b/a California Blue Shield v. Professional, Office and Industrial Union, affiliated with Marine Engineers' Beneficial Association*, (AFL-CIO), 178 NLRB 116 (1969)).

All of the petitioned for employees appear to share the same relationship to the City's administrative organization. All of the employees fall within the City's maintenance trade job classifications.

There is a long history of collective bargaining within the City. For twenty years the City's Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Water Plant Maintenance Mechanics, and Lead Water Plant Maintenance Mechanics were included in a single bargaining unit. Until recently decertified, the Operating Engineers represented that bargaining unit. The City and the Operating Engineers entered into a Memorandum of Understanding concerning that bargaining unit.

Based upon the foregoing, the Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Mechanical Maintenance Foreman, Mechanical Maintenance Helpers, Water Plant Maintenance Mechanics, and Lead Water Plant Maintenance Mechanics share a clear and identifiable community of interest. Therefore, a bargaining unit consisting of all full-time and part-time Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers, Mechanical Maintenance Foreman, Mechanical Maintenance Helpers, Water Plant Maintenance Mechanics, and Lead Water Plant Maintenance Mechanics, excluding all others, is an appropriate unit.

Furthermore, the Board concludes that the bargaining unit petitioned for by the Operating Engineers in Public Case No. R 2003-012 will cause an over-fragmentation of the bargaining unit. Additionally, the Operating Engineers have not demonstrated that the twenty-eight employees included in that proposed bargaining unit require separate representation to protect their right to effective bargaining. *Sheet Metal Workers International Association Local No. 2 v. Central Missouri State University*, Public Case No. 83-001 (SBM 1983). Given that the positions filled by those twenty-eight individuals were previously included in a large citywide bargaining unit, past history demonstrates the individuals can be effectively represented as part of a larger unit. As the Missouri Supreme Court recognized in *Parkway School District v. Parkway Association of Education, Support Personnel, PA-ESP, Local 902/MNEA*, 807 S.W.2d at 68 “there is strength in size.” Therefore, the Board concludes that the bargaining unit petitioned for by the Operating Engineers in Public Case No. R 2003-012 is not appropriate and that representation petition should be dismissed.

Finally, 8 CSR 40-2.030 requires petitions for certification to be accompanied by a showing of interest of not less than thirty percent (30%) of the appropriate unit. The Pipefitters have a sufficient showing of interest within the citywide bargaining unit created by the Board herein.<sup>1</sup> Furthermore, 8 CSR 40-2.130 requires interveners to have at least a ten percent (10%) showing of interest within the appropriate bargaining unit. The Operating Engineers have the required ten percent showing of interest within the citywide bargaining unit created by the Board herein. Therefore, both labor organizations may be included on the ballot in the representation election.

## **ORDER**

The State Board of Mediation finds that a bargaining unit consisting of all full-time and part-time Mechanical Maintenance Workers, Lead Mechanical Maintenance Workers,

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<sup>1</sup> Pursuant to 8 CSR 40-2.070, the Chairman determines the adequacy of the showing of interest and such decision is not subject to collateral attack.

Mechanical Maintenance Foreman, Mechanical Maintenance Helpers, Water Plant Maintenance Mechanics, and Lead Water Plant Maintenance Mechanics, excluding all others, is an appropriate unit. An election is ordered therein.

The Board further finds that the bargaining unit petitioned for by the Operating Engineers in Public Case No. R 2003-012 is not appropriate. Therefore, the petition in Public Case No. R 2003-012 is hereby dismissed.

Since the Pipefitters and Operating Engineers both have the requisite showing of interest to be included on the ballot in the representation election, the names of both labor organizations will appear on the ballot unless within ten days of the date of this order one or both of the organizations inform the Chairman in writing that they do not wish to participate in the representation election.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but no later than 45 days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged since the designated payroll period and who have not been rehired or reinstated before the election.

Unless one or both of the labor organizations chooses not to participate in the election, the International Union of Operating Engineers, Local 2, and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S.A. and Canada, Local 562, will both appear on the ballot along with the choice of no union. Those

eligible to vote shall vote whether or not they desire to have the International Union of Operating Engineers, Local 2, or the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S.A. and Canada, Local 562, as their exclusive bargaining representative. They may also vote to have no bargaining representative. If no choice on the ballot receives a majority of the valid ballots cast, a run-off election will be held pursuant to 8 CSR 40-2.170.

The City shall submit to the Chairman of the State Board of Mediation, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

STATE BOARD OF MEDIATION

(SEAL)

\_\_\_\_\_  
John A. Birch, Chairman

\_\_\_\_\_  
LeRoy Kraemer, Employee Member

\_\_\_\_\_  
Lois Vander Waerdt, Employer Member